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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 959 of 1997

with

SPECIAL CIVIL APPLICATION No 5219 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 to 5 NO

DEPUTY EXECUTIVE ENGINEER

Versus

JAYANTILAL NARSINHBHAI SHAH

Appearance:

1. Special Civil Application No. 959 of 1997
MR AY KOGJE AGP for Petitioner No. 1
MR DS VASAVADA for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2
 2. Special Civil Application No.5219 of 1996
MR DS VASAVADA for Petitioner
MR ZY KOGJE AGP for Respondents
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CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 22/12/2004

ORAL JUDGEMENT

1. By first petition being Special Civil Application No.959 of 1997, styled as a petition under Articles 226 and 227 of the Constitution, the petitioner has, in reality, challenged the orders of the Labour Court, Anand in Reference (LCA) No.322 of 1984, Misc. Application No.81 of 1992 and in Misc. Application No.10 of 1996. The first-mentioned award and order dated 23.3.1992 in Reference (LCA) No.322 of 1984 was an ex-parte award ordering reinstatement with full backwages of the respondent-workman and subsequent orders were in the applications made for setting aside that award. Those applications having been rejected, the present petition appears to have been filed with the grievance that the impugned award was baseless and perverse insofar as the respondent's version was accepted as gospel truth and the subsequent applications were required to be allowed in the interest of justice and for appropriate adjudication of the disputes.

2. The respondent-workman appears to have originally approached the Labour Court with a case that he was in continuous service for three years before being discharged as early as in the year 1983 by not allowing him to join his duties on 15.6.1983. The dispute in that regard appears to have been referred in the year 1984 and the impugned award was made on 23.3.1992. The last order under challenge is dated 7.10.1996 and the petition preferred thereafter in January 1997 comes up for final disposal now in the year 2004. In the meantime, as recorded in the order dated 27.8.1997, the respondent-workman has been reinstated by order dated 1.2.1997 and it was ordered that the relief with regard to backwages granted by the Labour Court was to remain stayed. Thus, the respondent-workman appears to have been reinstated with effect from 6.2.1997.

3. In the above facts and circumstances, the litigation is clearly afflicted with endemic delays at every stage and even as the original ex-parte award of reinstatement is based on flimsy evidence, the full relief of setting aside that award is not pressed in view of ignorance and neglect of the legal proceedings exhibited by officers of the petitioner. The learned counsel on both sides suggested that, in the peculiar facts and circumstances of the case, a pragmatic approach may be adopted by the Court so as not to reopen the

proceedings before the Labour Court after about 20 years of termination and 12 years of the first adjudication. It was also submitted that, by virtue of the service of the respondent subsequent to filing of the petition, he might have settled in some place and position under employment of the petitioner. On the other hand, during pendency of the industrial dispute, the reference was once dismissed on account of default of the respondent also and there was no apparent reason for the respondent to wait for about ten years in obtaining even an ex-parte award. Admittedly, there is no material on record to suggest that the respondent had remained unemployed throughout the period from June 1983 to February 1997 and it could not be disputed that in any case he was originally employed on daily-wage and intermittent basis. Therefore, it would be inappropriate and baseless to grant any backwages to the respondent for the intervening period. Learned counsel Mr.Vasavada fairly conceded that in such cases of long delays, full backwages cannot be insisted upon and grant of even 50% backwages by rule of thumb may or may not be fully justified. Therefore, having regard to the submissions of the learned counsel and in the facts and circumstances, the petition is partly allowed and the impugned award and order dated 23.3.1992 is modified to the extent that the respondent shall not be entitled to any backwages. The order as regards reinstatement on original post remains intact. Rule made absolute to the aforesaid extent with no order as to costs.

4. The second petition being Special Civil Application No.5219 of 1996 is filed by the workman, the respondent in the aforesaid petition, with a prayer mainly to have the impugned award implemented. That petition does not survive in view of the aforesaid order and accordingly stands rejected and Rule therein is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)